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Federal Communications Commission
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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20054

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket 96-263

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

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Dated: January 29, 1997

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COMMENTS OF WINSTAR COMMUNICATIONS, INC.

INTRODUCTION

WinStar Communications, Inc. (WinStar), by its undersigned counsel and pursuant to the Commission's rules, submits these comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above captioned proceeding.

WinStar is a publicly-held company (traded on the NASDAQ) which, among other things, develops, markets, and delivers local telecommunications services in the United States.[1/] The Company, through its operating affiliates, provides facilities-based local telecommunications services on a point-to-point basis using wireless, digital millimeter wave capacity in the

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1/ WinStar is authorized to provide facilities-based telecommunications service in the 43 largest metropolitan statistical areas. WinStar's operating companies have been approved to offer competitive local exchange carrier services in 17 jurisdictions, and applications for such authority are pending in six other jurisdictions. In addition, WinStar's affiliates are authorized to operate as competitive access providers in 30 jurisdictions, and have applications pending in six other jurisdictions. A separate WinStar subsidiary provides switched and switchless long distance services on a resale basis. WinStar has initiated switched local exchange service on a facilities basis in New York and currently is in the process of completing switch installation in five additional jurisdictions.

38 gigahertz (GHz) band, a configuration referred to by WinStar as Wireless Fiber℠.[2/] The passage of the Telecommunications Act of 1996[3/] should hasten WinStar's ability to provide competitive services — particularly, local exchange services.

WinStar's comments focus on three areas:

- Access charges should be restructured so that end-users directly and explicitly pay for the non-traffic sensitive costs that are presently recovered through the carrier common line (CCL) and subscriber line charge (SLC). To an end-user, the price of a loop includes only the SLC, and the remaining costs are hidden in the CCL which are usage based charges paid by long distance carriers. Restructuring the current rate recovery methodology from non-traffic sensitive and traffic sensitive elements to one non-traffic sensitive rate element borne by the end-user would more correctly reflect the cost of local service and allow competitors to compete head-to-head based on their costs.
- Regulation of new entrants' terminating access charges is inappropriate given the economic incentives of new entrants and is fundamentally inconsistent with the intent of the Telecommunications Act to displace regulation with competition.
- In order to provide incumbents with continuing incentives to open the local marketplace to competition, relaxation of regulation should be tied to the development and implementation of workable interconnection mechanisms that ultimately will assure the development of access competition.

2/ WinStar's Wireless Fiber℠ networks are so named because of their ability to duplicate the technical characteristics of fiber optic cable with wireless 38 GHz microwave transmissions.

3/ Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996).

Access Charges Should be Restructured to Recover All Non-Traffic Sensitive Costs from End Users

The structure of access charges should be overhauled to better reflect how costs are incurred and to eliminate competitive distortions. The recovery of interstate non-traffic sensitive loop costs through a combination of flat-rate subscriber line charges (SLCs) paid by end-users and usage sensitive carrier common line (CCL) charges paid by long distance carriers is particularly problematic. This structure results in at least two major market distortions.

First, this bifurcated recovery of local exchange carriers' loop costs distorts local service competition by distorting the price of local telephone service. From an end-user's perspective, the price of local service is the local service charge plus the SLC. The portion of loop costs recovered in the CCL are hidden from local service consumers and skews the local service market by artificially depressing the perceived price of the non-traffic sensitive loop element. In the emerging competitive marketplace, prices should reflect the nature and cost of the element provided. The bifurcated structure of the CCL/SLC access charges, however, artificially holds the direct price of local loop facilities (local service charges plus the SLC) below actual costs. This results in an unfair advantage for entrenched incumbent carriers to receive significant contribution from the CCL and gives them the appearance of being highly competitive with companies like WinStar in provisioning, engineering, operating and maintaining loop plant. For example, when properly loaded, WinStar's wireless 38GHz "loop" technologies are capable of providing local service to consumers at a cost that is substantially lower than the costs associated with installing, operating and maintaining traditional landline loop facilities. However, because of the CCL/SLC structure of access charges, consumers cannot directly compare a cost-based price for WinStar's loop facilities with a cost-based price for the incumbent provider's loop facilities.

Second, the number of loops and loop costs grow as customers subscribe to local telephone service. However, carrier common line revenues grow as long distance calling volumes expand. To the extent that the growth of long distance traffic volumes (and carrier common line revenues) exceeded the growth in local loops, incumbent carriers realized windfall revenues in excess of their local loop costs.[4/] These historic windfalls have bloated incumbents' profits which can be used as a "warchest" to finance competitive activities and price reductions in more competitive market segments.

The Commission suggests restructuring the recovery of local loop costs so that customers who are not PIC'd to a long distance carrier pay all of the interstate loop costs.[5/] WinStar recommends that such a restructuring be extended to all customers and not limited to those customers without a long distance carrier. The CCL should be eliminated and end-users should pay a single flat-rated charge to cover non-traffic sensitive costs. Such a restructuring would eliminate the serious market distortions of local service prices. Such a restructuring would allow customers to accurately compare prices and choose among competing local service providers.

4/ Interstate switched access minutes have increased by 140% from 1985 to 1994 while Bell Operating Company access lines have increased by only 29% during the same period. *Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Tables 14 and 23 (May 1996).

5/ NPRM at ¶ 57-70.

REGULATION OF NEW ENTRANTS' TERMINATING ACCESS CHARGES IS INAPPROPRIATE

The Commission seeks comment on whether it should regulate the rates of new entrants that provide terminating interstate access services.[6]

Rate regulation of the access services provided by new entrants with absolutely no market power yields no public policy benefits and is fundamentally inconsistent with the pro-competition intent of the Telecommunications Act. If the Commission's policy objective is to displace regulation with market forces, rate regulation of new entrants' terminating access charges is a step in the wrong direction.

To be successful in a market where the incumbent carrier starts with virtually a 100% market share, a new entrant must provide superior services, better quality and competitive prices. Certainly, a new entrant can raise its terminating access charges and earn short term profits from its carrier customers who do not select the terminating access provider. However, if a new entrant "gouges" its terminating access customers, who are sophisticated carriers (*i.e.*, AT&T, Sprint, MCI and WorldCom), it will poison its prospects for convincing such customer/carriers to migrate their originating access business away from the incumbent carrier. Also, a new entrant that raises its terminating access charges to non-competitive levels risks losing its terminating access revenues, as well. If terminating access charges are raised to exorbitant levels, the long distance carriers that pay those terminating access charges would have an economic incentive to negotiate alternative access arrangements with their customers that are designed to avoid a particular new entrant's facilities. For example, a new entrant that assesses high terminating switched access charges creates incentives for long distance carriers to install or lease special access lines to a new entrant's largest (and most lucrative) customers.

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[6] NPRM at ¶¶ 277-280.

Thus, the normal operation of market forces can be expected to control the level of terminating access charges.

Conformance with regulatory requirements is expensive, an expense that disproportionately impacts newer entrants, such as WinStar.[7/] While regulation of switched access charges is a generic problem for new entrants, it is particularly problematic for companies such as WinStar that are recent entrants into the market. The compliance burden on newer carriers such as WinStar is exponentially greater than the compliance burden on other, larger more established entities, like AT&T, MCI and the incumbent local exchange carriers, who have far greater financial and internal resources to draw from with respect to staying abreast of regulatory requirements, and who can spread those costs over a larger base of revenues. The imposition of regulation on terminating access services with its attendant costs is an empty exercise that creates a financial drain on newer entrants, serves no public policy purpose, and has absolutely no relationship to the services WinStar expects to provide to its customers.

ACCESS REFORM SHOULD BE TIED TO THE DEVELOPMENT OF ACTUAL COMPETITION

Access reform, specifically relaxation of the regulatory requirements of incumbent local exchange carriers, should be tied to the development and implementation of mechanisms that will result in actual competition in access markets. Given the experience in long distance markets, actual facilities-based competition is likely to develop gradually in access markets and the market dominance of incumbent carriers can be expected to erode rather slowly. WinStar believes that tying regulatory relief to the implementation of mechanisms that will result in actual

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7/ In addition to the expense regulatory requirements impose, they often do not produce efficient outcomes. The economic literature is rich with examples, see R. Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1 (1960) and H. Hovenkamp, *Marginal Utility and the Coase Theorem*, 75 CORNELL L. REV. 783 (May 1990).

competition provides a powerful incentive to achieve the pro-competition objectives of the Telecommunications Act and accelerate the transition to competitive access markets. In pursuing interconnection agreements, for example, WinStar found that it was unable to reach a voluntary agreement with GTE and Sprint/United within the statutory 135/160 day negotiation period. In comparison, WinStar reached agreements with all of the Bell Operating Companies it has negotiated with, without resorting to arbitration.[8/] WinStar attributes the negotiation failure with GTE and Sprint/United to the fact that neither of these carriers have an express incentive (*i.e.*, entry into interLATA long distance market) to develop interconnection mechanisms.

Further, once a Bell Operating Company is allowed to provide interLATA services, the incentives it has to provide and implement workable interconnection arrangements with competitors will largely disappear. Thus, tying relaxed access regulation to requirements that will assure the development of robust access competition will provide incumbent carriers with continuing incentives to help to ensure that access competition does, in fact, develop.

8/ WinStar has negotiated agreements with six of the Bell Operating Companies and is presently negotiating with one Bell Operating Company. WinStar's negotiations with the remaining Bell Operating Company have not reached a point where WinStar must petition for arbitration of unresolved issues.

CONCLUSIONS

For the reasons discussed above, and in the manner discussed above, WinStar recommends that the Commission restructure access charges to encourage and recognize access competition. In particular, WinStar urges the Commission to restructure the recovery of non-traffic sensitive costs to eliminate the CCL and require that end-users pay a flat-rate charge that reflects all of the non-traffic sensitive loop costs.

Respectfully submitted

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Dated: January 29, 1997

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January 1997, copies of the foregoing COMMENTS OF WINSTAR COMMUNICATIONS, INC., CC Docket Nos. 96-262, 94-1, 91-213, 96-263, were sent via Messenger to the persons below:

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